Filed 11/27/12 LaMelza v. Lindsay CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MICHAEL LAMELZA et al.,	
Plaintiffs and Appellants,	G045402
v.	(Super. Ct. No. 30-2009-00180150)
SAM LINDSAY et al.,	O P I N I O N
Defendants and Respondents.	

Appeal from a judgment of the Superior Court of Orange County, Ronald L. Bauer, Judge. Reversed and remanded.

The Dressler Law Group, Thomas W. Dressler; Law Offices of Dennis Hartmann, Dennis Hartmann; Snell & Wilmer, Richard A. Derevan and Todd E. Lundell for Plaintiffs and Appellants.

Grant, Genovese & Baratta, David C. Grant and Catherine Convy for Defendants and Respondents.

* * *

Plaintiffs Michael LaMelza and Villa Rossa, LLC (plaintiffs) sued Sam Lindsay, Robert Gilroy, First West-DHS Partners LP, and First West Capital Corporation (defendants) for breach of fiduciary duty and other claims. In sum, plaintiffs alleged that while Lindsay was employed by LaMelza as a real estate development consultant, he and Gilroy were engaged in a plan to buy the subject property themselves. Eventually they did, and resold it for a profit of $90 million. At the conclusion of a bench trial, the trial court concluded that while Lindsay had a fiduciary duty to LaMelza, he was not liable for breach of fiduciary duty because LaMelza had ratified the sales transaction once he became aware of the relevant facts. We conclude the trial court applied the wrong legal standard on the ratification defense. We also find defendants' additional argument regarding the statute of limitations is without merit. We therefore reverse and remand for further proceedings.

I

FACTS

We draw our summary of the relevant facts largely from the trial court's statement of decision. "The twisting tale of a parcel of pre-development real property in the Coachella Valley has led to a series of lawsuits regarding disputed claims to the financial proceeds of sales of that land. In the present suit, plaintiffs Michael LaMelza ('LaMelza')[1] and Villa Rossa, LLC ('Villa Rossa') contend that defendants Sam Lindsay ('Lindsay'), Robert Gilroy ('Gilroy'), First West-DHS Partners LP ('First West DHS'), and First West Capital Corporation ('First West Capital') combined to deprive LaMelza of the full value of the latter's ownership of the subject parcel, generally known as the Stoneridge Project or 'Stoneridge.'

1 The statement of decision (and other parts of the record) sometimes spells LaMelza's name as "La Melza." For the sake of consistency, we have standardized it as LaMelza, the spelling used in the parties' briefs.

"The following brief summary of the history of Stoneridge is intended to give only the undisputed facts that constitute the background of the parties' disputes. In early 2003, Lindsay and Gilroy [attempted to purchase the Stoneridge property from] John Groner ('Groner'), a non-party to this trial. . . . Shortly after that effort failed, LaMelza purchased the property. LaMelza had some experience developing property in the area and was then pursuing the early stages of two other projects.

"The next event of note is one that the court found odd, but which was the subject of no dispute among the parties. Lindsay arrived unbidden and unknown at LaMelza's office on July 27, 2003 and asked if there might be work available for a person with Lindsay's experience in real estate development. Lindsay professed to be skilled in gaining entitlements and offered to do financial analyses, write the necessary letters, work with consultants, and steer properties through the approval process. A deal was struck between these two strangers; LaMelza testified 'I hired him on the spot.' Lindsay immediately commenced working on the myriad tasks necessary to convert the three parcels of raw land under LaMelza's control into packages that might be sufficiently entitled to fetch a good profit in the market or that might perhaps be carried through to full development. LaMelza's praise of Lindsay's efforts during the next few months could not have been more glowing. When asked at trial if Lindsay's efforts met his expectations, LaMelza answered, with a bit of theatrics: 'No. (Pause) They exceeded my expectations.'" In September 2003, LaMelza received an appraisal estimating that the property, once properly entitled, would be worth approximately $12 million. In March 2004, LaMelza and Lindsay executed a retroactive contract governing their relationship.

"This smooth and amicable relationship between LaMelza and Lindsay eventually led to a discussion about the possible sale of Stoneridge. The proportion of undisputed and disputed evidence now begins to tilt severely toward the latter, but it is

agreed that Gilroy, acting through First West, purchased Stoneridge from LaMelza for $20 million. This sale closed on July 17, 2004. Five months later, First West agreed to sell the property to builder D.R. Horton for $110 million. When LaMelza heard these details, he was not amused. He filed two actions against several defendants, alleging a variety of claims[2] and seeking damages or restitution or other remedies allegedly deriving from the fact that the second sale of Stoneridge yielded vastly more than LaMelza received from the first sale.

"A quick summary of the parties' disputed issues might be as follows: LaMelza contends that Lindsay connived with Gilroy to 'stalk' the Stoneridge project; to gain LaMelza's trust and confidence; to set in place the financing for a purchase; to convince the plaintiff that $20 million was a good price; to effect such a purchase from LaMelza; and then to resell at a vast profit. This plan was kept secret from LaMelza; it all constituted a breach of the fiduciary obligation owed by Lindsay to LaMelza; and the profits of the second sale should be disgorged to the plaintiffs.

"The defendants disagree. On the facts, they urge that Lindsay was a mere salaried gofer who never owed any fiduciary obligation to LaMelza; that LaMelza was fully advised before the first sale that Lindsay planned to join with Gilroy to continue with the Stoneridge development efforts thereafter; that the $20 million price gained by LaMelza was then fair and just; and that later profits were a consequence of a sharp contemporaneous boom in the real estate market and of the efforts of Lindsay and Gilmore. On the law, defendants argue that the suit is untimely and that it is not being pursued by the proper plaintiff."

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2 The claims included breach of fiduciary duty, breach of written contract, tortious interference with contract, and intentional interference with prospective economic advantage.

The court disagreed with defendants that LaMelza was not the proper plaintiff. It also disagreed with the contention that Lindsay did not owe LaMelza any fiduciary duty: "[T]here should be little doubt that Lindsay's employment imposed upon him a duty of utmost loyalty to his employer. Lindsay was paid $20,000 per month for his work, with the further potential of a percentage of any profits gained through the sale of any of LaMelza's three parcels (5% for the Stoneridge project). Lindsay was hardly a scrivener or receptionist. He was hired for his knowledge of real estate development and was given unlimited access to all information known to the plaintiff about these projects. He was encouraged to negotiate with third parties for services, to gain necessary approvals from governmental entities, to seek financing, and to evaluate the properties for potential sales. This was a virtual partnership between LaMelza and Lindsay. Lindsay cannot seriously dispute that he owed a fiduciary obligation of utmost good faith to his employer/co-venturer. At least by implication, the defendants have wisely acknowledged that Lindsay owed a duty of loyalty arising from his July 27, 2003 agreement."

The court also rejected the contention that the statute of limitations barred LaMelza's claim. "The essence of the complaint is the allegation that Lindsay acted secretly in the conduct of this enterprise, to the financial disadvantage of LaMelza. This suit was filed July 12, 2009. The circumstances of trust and a fiduciary obligation between these parties remove any obligation that the plaintiffs might otherwise have to ferret out the defendants' misconduct. An obligation to snoop, inquire, and distrust would be anathema to a relationship based upon trust. A relationship of trust permits the plaintiffs to believe that no misconduct has occurred — and no cause of action has accrued — unless there is actual notice to the contrary. If the plaintiffs' allegations of secrecy are true, the defendants would have the burden of showing that LaMelza had actual knowledge that he had been wronged before July 12, 2006 (if a three-year statute

applies) or July 12, 2005 (in the event of a four-year statute). They met neither burden. Their principal argument is that a multi-party meeting on April 28, 2004 resulted in the disclosure to LaMelza that Lindsay was now working for Gilroy. But no damages could have been claimed at that time, because no resale of the Stoneridge property had occurred, with the resulting $90 million profit accruing to the Lindsay/Gilroy team. No cause of action accrues until damages have been suffered; this happened, at the earliest, on July 22, 2005, when escrow closed on the $110 million sale to Western Pacific Housing, Inc. This analysis assumes that LaMelza then had actual knowledge that Lindsay had betrayed his trust. Plaintiffs argue that this actual knowledge was still absent as late as July, 2007 when LaMelza filed action against Lindsay in Riverside County[3] and did not make all the allegations that are at the heart of this suit. Plaintiffs even argue that LaMelza did not gain full realization of Lindsay's alleged duplicity until immediately before the July 20, 2009 filing of this action. Much of this discussion is of no moment, however, as the court has concluded that this suit was timely even under the earliest possible accrual of the plaintiffs' claim and the shortest possible statute of limitations."

Turning to the issue of whether Lindsay breached his fiduciary duty to LaMelza, the court noted: "July 7, 2004 is a pivotal date in this case. On that date, LaMelza willingly extended the time for the close of his sale of Stoneridge. He then had the right to refuse that extension and cancel the sale, but he chose to proceed. The question therefore arises as to whether the plaintiff then knew that Lindsay would be proceeding forward as a principal in the purchasing entity. Ample evidence confirms that he did. By that date,

"-- Sale of Stoneridge was being discussed.

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3 This action was apparently dismissed.

"-- Lindsay proposed to LaMelza that he might join with a Stoneridge purchaser to carry forward with that development.

"-- The LaMelza-Lindsay affiliation was terminated on about May 1, 2004. This event seems nearly as strange as their original meeting. Their mutual comfort level with each other was apparently now low, and LaMelza either terminated Lindsay or encouraged the latter to quit. While there is a sharp dispute in the testimony about meetings on December 10, 2003 and April 28, 2004 and the extent of any disclosure then made to LaMelza by the Gilroy-Lindsay team, the court has concluded that the May 1 breakup must have been occasioned by LaMelza's knowledge that Lindsay had moved on.

"-- On May 3, 2004, LaMelza told Gilroy that Lindsay was now a free agent. Gilroy, in turn, wrote that he now felt free to contract with Lindsay as a project manager. This was almost surely an artful dodge by Gilroy, who had long ago made plans to work together with Lindsay.[4]

"-- By May 12, 2004, the LaMelza-Lindsay relationship had fallen to the point that Lindsay hired an attorney to protect his interests in final payments for services on the LaMelza projects.

"-- In writing to LaMelza on May 17, 2004, Gilroy explicitly defines 'our team' in the Stoneridge project as including Lindsay.

"-- LaMelza wrote to confirm that Lindsay would no longer be paid by LaMelza, but would now be compensated by the Stoneridge purchasers.

"In summary, with substantial and repeated information that Lindsay would transfer his efforts on the Stoneridge project to the Gilroy buying team, LaMelza

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4 Indeed, there was ample evidence of this. Lindsay and Gilroy had tried to buy the Stoneridge property from Groner before LaMelza purchased it. In January 2004, they executed a written agreement to buy Stoneridge from LaMelza.

nevertheless acquiesced in that plan. In the face of all this information, the plaintiff never sought any further details about the future of Stoneridge or of Lindsay. The court must conclude that LaMelza knew all that he wanted to know and willingly proceeded with this sale. It is not trivial to note that LaMelza had all the information he wanted, because he was an experienced land developer who knew all the ins and outs of the business and could not have been genuinely surprised about the subsequent work on the property. He knew that Stoneridge was not going to lie fallow. Much of his communication with Lindsay, Gilroy and others in the early months of 2004 related to the ongoing efforts to gain the necessary entitlements and approvals for further development of Stoneridge.

"A missing ingredient in the plaintiffs' case is any evidence that the course of history was impacted by Lindsay's use of any special information gained in LaMelza's employ. What secrets of LaMelza were 'stolen' for the benefit of Lindsay and Gilroy? None. LaMelza does not even make such a claim.

"Instead, the plaintiffs contend that Lindsay used information that was not known to LaMelza, but which was learned by the defendant while working with LaMelza, for the later benefit of Lindsay, Gilroy, and others. They did not prove this. What was this information? Did Lindsay know that Stoneridge was worth $110 million when it was sold by LaMelza? Hardly; in fact, LaMelza then had an MAI appraisal of the property at $12.6 million (contingent upon conditions not then realized), which was substantially more than he paid for it. Was there even evidence that the property was worth any more than $20 million when LaMelza sold it for that amount? No. Did Lindsay know that the property would later be sold for $110 million? That was not proven. Would LaMelza have declined to sell Stoneridge if he had then known what would eventually occur there? Even this was not proven.

"In fact, no one could know that the future would unfold as it did after LaMelza sold Stoneridge. Substantial additional work was done on the project under the auspices of the Gilroy-First West group. Financing was obtained. A home builder came upon the scene. A sharp spike occurred in the real estate market. LaMelza could have stayed around to pursue this project if he had wanted to bet on the occurrence of these contingencies instead of cashing out for a good profit. He made his choice, with full knowledge that Lindsay was changing horses and would continue to ride in search of further profits. Surely LaMelza, an experienced real estate developer, did not think that Lindsay was continuing to work on Stoneridge with the hope of losing money. LaMelza plainly knew that Lindsay and Gilroy expected to make a profit on Stoneridge. That was no secret. LaMelza willingly took his profit, and he willingly allowed Lindsay to seek his."

Thus, the court concluded that while Lindsay had a fiduciary duty to LaMelza and breached it, LaMelza later ratified Lindsay's behavior by choosing to proceed with the closing after he became aware of Lindsay's self-dealing. The court thus entered judgment for defendants.

After reviewing the tentative decision, plaintiffs filed objections, arguing the statement of decision did "not adequately specify what was concealed in December 2003 and January 2004 (at the time of the original sale negotiations and contract) and what was known in July 2004 (at the time of the extension). This lack of specificity leads to inconsistency and ambiguity between the finding in the limitations analysis that Defendants failed to meet their burden to show any notice to Mr. LaMelza of any wrongdoing prior to 'July 12, 2006', and the finding that the state of Mr. LaMelza's knowledge at the time of the July 2004 extension was sufficient to purge the taint of self-dealing." The court declined to make any changes to its statement of decision, and judgment was entered accordingly.

II

DISCUSSION

Standard of Review

"When findings of fact are challenged in a civil appeal, we are bound by the familiar principle that 'the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.] We view the evidence most favorably to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor. [Citation.] Substantial evidence is evidence of ponderable legal significance, reasonable, credible and of solid value. [Citation.]" (*Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1100.) Pure questions of law, however, including the interpretation of any relevant statutes, are subject to de novo review. (*Sutco Construction Co. v. Modesto High School Dist.* (1989) 208 Cal.App.3d 1220, 1228.)

Generally, given the doctrine that the judgment of the lower court is presumed correct, the reviewing court indulges all presumptions in favor of the prevailing party on matters that might be implied from the judgment. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) But under Code of Civil Procedure section 634, "When a statement of decision . . . is ambiguous and the record shows that the omission or ambiguity was brought to the attention of the trial court either prior to entry of judgment . . . it shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue." Thus, the existence of some key facts here — such as what, if any, disclosures were made to LaMelza by Lindsay and Gilroy while the sales contract was being negotiated — cannot be presumed, as they were the subject of objections to the tentative statement of decision by plaintiffs.

Breach of Fiduciary Duty

Because plaintiffs focus their attention on their cause of action for breach of fiduciary duty, we shall do the same. "The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damage proximately caused by the breach." (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086.)

The first element is not seriously contested by defendants. Rather, they claim that "respondents fully performed any and all fiduciary duties . . . ." The trial court, with far more than substantial evidence to support its decision, concluded that Lindsay indeed had such a duty, noting: "Lindsay was paid $20,000 per month for his work, with the further potential of a percentage of any profits gained through the sale of any of LaMelza's three parcels (5% for the Stoneridge project). Lindsay was hardly a scrivener or receptionist. He was hired for his knowledge of real estate development and was given unlimited access to all information known to the plaintiff about these projects. He was encouraged to negotiate with third parties for services, to gain necessary approvals from governmental entities, to seek financing, and to evaluate the properties for potential sales. This was a virtual partnership between LaMelza and Lindsay. Lindsay cannot seriously dispute that he owed a fiduciary obligation of utmost good faith to his employer/co-venturer."

A fiduciary duty imposes on an employee a duty to act loyally for the principal's benefit. (Rest.3d Agency, § 8.01.) This includes a duty not to compete with the principal. "Throughout the duration of an agency relationship, an agent has a duty to refrain from competing with the principal and from taking action on behalf of or otherwise assisting the principal's competitors." (Rest.3d Agency, § 8.04; see also *Huong Que, Inc. v. Luu* (2007) 150 Cal.App.4th 400, 410-411.) Further, the employee cannot "acquire a material benefit from a third party in connection with transactions

conducted or other actions taken on behalf of the principal" (Rest.3d Agency, § 8.02), nor may an employee "deal with the principal as or on behalf of an adverse party in a transaction connected with the agency relationship." (Rest.3d Agency, § 8.03.)

The trial court noted that prior to May 3, 2004, when Gilroy told LaMelza that he now felt free to contract with Lindsay, Gilroy and Lindsay had "long ago made plans" to work together. Indeed, the trial court referred to Gilroy's statement as an "artful dodge."

Thus, although the trial court explicitly found a fiduciary relationship and impliedly found a breach of that relationship, the court relied on the doctrine of ratification.[5] The court concluded that after LaMelza knew that Lindsay was now working for Gilroy, he had the opportunity to cancel the sale and chose to proceed anyway.[6]

Unfortunately, the court applied an erroneous legal standard in reaching this conclusion. A fiduciary in Lindsay's position has the utmost duty of disclosure regarding the subject of the agency. "One who acts as an agent and also deals with his principal as to the subject matter of the agency cannot take advantage of his principal by withholding from him information secured by means of the agency. In the language of the Restatement of Agency: 'Before dealing with the principal on his own account . . . an

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[5] In their brief, defendants do not really try to defend the trial court's decision on ratification, instead arguing that LaMelza simply did not care about Lindsay's role was with the buyer of the property. Ultimately, that argument would lead us to the same conclusions we discuss here — Lindsay's role as a fiduciary is not reduced by LaMelza's supposed disinterest.

[6] Plaintiffs argue that the emphasis placed by the trial court on the July 7 extension missed the mark. They argue that had LaMelza attempted to cancel escrow on that date, he surely would have ended up in litigation. We agree that the trial court overemphasized this date, because whether or not LaMelza had the right to cancel, he was still not fully informed as to all the relevant facts regarding Lindsay and Gilroy's intent and their earlier plans for the property.

agent has a duty, not only to make no misstatements of fact, but also *to disclose to the principal all material facts fully and completely*. A fact is material . . . if it is one which the agent should realize would be likely to affect the judgment of the principal in giving his consent to the agent to enter into the particular transaction on the specified terms. Hence, the disclosure must include not only the fact that the agent is acting on his own account . . ., but also all other facts which he should realize have or are likely to have a bearing upon the desirability of the transaction from the viewpoint of the principal.' [Citation.]" (*Rattray v. Scudder* (1946) 28 Cal.2d 214, 224-225, italics added.)

While plaintiffs argue that both full disclosure and a voluntary act evidencing acquiescence are both necessary, we need not so decide. The Restatement Third of Agency suggests the following, in relevant part: "Conduct by an agent that would otherwise constitute a breach of duty. . . does not constitute a breach of duty if the principal consents to the conduct, provided that [¶] (a) in obtaining the principal's consent, the agent [¶] (i) acts in good faith, [¶] (ii) discloses all material facts that the agent knows, has reason to know, or should know would reasonably affect the principal's judgment unless the principal has manifested that such facts are already known by the principal or that the principal does not wish to know them, and [¶] (iii) otherwise deals fairly with the principal; and [¶] (b) the principal's consent concerns either a specific act or transaction, or acts or transactions of a specified type that could reasonably be expected to occur in the ordinary course of the agency relationship." (Rest.3d Agency, § 8.06.) Whichever formulation the trial court was attempting to follow, it is clear that full disclosure of all relevant information is key.

It is equally clear from the facts supported by substantial evidence that any disclosure by Lindsay and Gilroy regarding their relationship before Lindsay left LaMelza's employ was anything but full. The statement of decision does not conclude that LaMelza was aware before the property sale that Lindsay had "long ago made plans"

to work with Gilroy. If LaMelza's employee had been making plans about Stoneridge with Gilroy for, quite possibly, the entire duration of his employment, that is certainly a relevant fact that any reasonable person would want to know. It might raise the possibility that the entire reason for Lindsay's presence was to persuade LaMelza to sell the property for the lowest possible price, to Lindsay's advantage and in violation of his fiduciary duty to LaMelza.

Defendants cite *Stevens v. Hutton* (1945) 71 Cal.App.2d 676 for the proposition that "the law does not require that one who is fully informed as to the facts should have independent advice concerning them nor that one who is fully competent to form a sound and advised opinion must have assistance in forming it." (*Id.* at p. 684.) Indeed. But this simply begs the question of whether LaMelza was "fully informed," as the court determined the plaintiff was in *Stevens*. The substantial evidence, as set forth in the statement of decision, does not support the conclusion that LaMelza was ever fully informed as to Lindsay's prior relationship with Gilroy. The evidence upon which the trial court based its decision only supports the notion that LaMelza knew of Lindsay's intent to proceed as a principal with the buyer before the sale was due to close in July. This is simply insufficient evidence, as a matter of law, to support the theory that LaMelza ratified Lindsay's actions with full knowledge of the facts.

Statute of Limitations

The only other basis on which defendants defend the judgment is the statute of limitations, a theory the trial court rejected, finding the suit timely filed "even under the earliest possible accrual and the shortest possible statute of limitations." The court concluded that defendants did not meet their burden "of showing that LaMelza had actual knowledge that he had been wronged before July 12, 2006 (if a three-year statute applies) or July 12, 2005 (in the event of a four-year statute)." The court further held that

plaintiffs' cause of action did not accrue — at the earliest — until July 22, 2005, when escrow closed on the resale of the property. LaMelza filed the instant action on July 21, 2009. Defendants do not challenge the trial court's conclusion that the earliest date plaintiffs' claims accrued was July 22, 2005.

Defendants argue, apparently for the first time, that the two-year statute of limitations for money had and received (Code Civ. Proc., § 339(1)) should apply. Plaintiffs argue we should not consider this argument for the first time on appeal, but it can be quickly dispatched with. That section applies to "An action upon a contract, obligation or liability not founded upon an instrument of writing . . . ." To the extent this is primarily an action for breach of contract (which it is not), it is a written one, as Lindsay and LaMelza memorialized their agreement in writing. This section is inapplicable.

Alternatively, defendants argue that the two-year statute of limitations set forth in Code of Civil Procedure section 338, subdivision (d) controls. That section governs "[a]n action for relief on the ground of fraud or mistake." Plaintiffs argue that the catch-all four-year statute of limitations in Code of Civil Procedure section 343 applies.

"Courts consider 'the nature of the right sued upon, not the form of action or the relief demanded' to determine the applicable statute of limitations. [Citations.]" (*Smyth v. USAA Property & Casualty Ins. Co.* (1992) 5 Cal.App.4th 1470, 1476.) Here, the nature of the right is not fraud, which requires detrimental reliance on false statements of fact or concealment of facts, but on the self-dealing of a fiduciary. Although there are certainly facts in this case supporting the notion that Lindsay made false statements and concealed pertinent facts from LaMelza, it is not the gravamen of the action. This is primarily a case for breach of fiduciary duty, based on the fiduciary's self-dealing and

lack of loyalty to his principal. The case was tried and decided on this basis. The citations defendants offer to the contrary are simply inapposite.

"The Code of Civil Procedure does not specify a statute of limitations for breach of fiduciary duty. The cause of action is therefore governed by the residual four-year statute of limitations in Code of Civil Procedure section 343 governing '[a]n action for relief not hereinbefore provided for' in the code. [Citation.]" (*Thomson v. Canyon* (2011) 198 Cal.App.4th 594, 606; see also *Stalberg v. Western Title Ins. Co.* (1991) 230 Cal.App.3d 1223, 1230; CACI No. 4120.) We find no convincing argument why it should not apply here, and therefore concur with the trial court that the case was filed within the statute of limitations.

Remedy

Our discussion above regarding breach of fiduciary duty and the ratification defense leaves us with two options. We could either remand to the trial court for a more specific statement of decision, closing the evidentiary gap on what was disclosed to LaMelza and when. But based on the facts that *are* included in the statement of decision, and supported by substantial evidence, this is an unnecessary exercise. The facts the trial court did find are simply inconsistent with the conclusion that full disclosure of *all* relevant facts — e.g., Lindsay and Gilroy's previous attempt to purchase the property together and their longstanding plans to partner — were made to LaMelza prior to the property sale. As noted above, this was relevant, material information that any property owner would want to know, and Lindsay had a duty to disclose it.

Accordingly, we remand to the trial court to enter judgment in favor of plaintiffs and determine the proper remedies. We agree with plaintiffs that "once the court decided that Lindsay did not have any liability, restitution and Gilroy and the entities' liability—which are dependent on first deciding that Lindsay is liable—fell by

the wayside." Thus, on remand, the trial court must consider the liability of Gilroy and the entity defendants, and what remedies, if any, are appropriate.

III

DISPOSITION

The case is reversed and remanded to the trial court for proceedings consistent with this opinion. Plaintiffs are entitled to their costs on appeal.

MOORE, ACTING P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.